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09/556,157	04/21/2000	Thomas Leoutsakos	TL-1	6306

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George E Kersey
P O Box 1073
Framingham, MA 01701

EXAMINER

SANTOS, ROBERT G

ART UNIT PAPER NUMBER

3673

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 11

Application Number: 09/556,157
Filing Date: April 21, 2000
Appellant(s): LEOUTSAKOS, THOMAS

George E. Kersey
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 16, 2002.

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(1) *Real Party in Interest*

The brief does not contain a statement identifying the Real Party in Interest. Therefore, it is presumed that the party named in the caption of the brief is the Real Party in Interest, i.e., the owner at the time the brief was filed. The Board, however, may exercise its discretion to require an explicit statement as to the Real Party in Interest.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

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(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 1-35 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

A substantially correct copy of appealed claims 1-35 appears on pages 14-16 of the Appendix to the appellant's brief. The minor errors are as follows:

- 1) In claim 19, the term "expandable member" should actually be the term "bellows."
- 2) In claim 31, line 1: The term "seated" is missing (between the terms "assisting" and "persons").
- 3) In claim 31, line 3: The term "seated" is missing (between the terms "a" and "person's").
- 3) In claim 31, line 5: The phrase "with said person remaining seated" is missing (after the term "limb").
- 4) In claim 31, line 6: The term "elevated" is missing (between the terms "said" and "lower").
- 5) In claim 35, line 1: The term "disabled" should be deleted.

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(9) *Prior Art of Record*

5,651,149

GARMAN

7-1997

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-35 are rejected under 35 U.S.C. 102(b). This rejection is set forth in prior Office Action, Paper No. 6.

(11) *Response to Argument*

In response to Applicant's arguments on pages 3, 5, 6, 11, and 12 of the Appeal Brief stating that the expandable member (39, 61) of Garman '149 does not move upwardly and forwardly to an inclined elevation, the examiner respectfully disagrees. As shown in Figures 9 & 9A and as disclosed in column 7, lines 10-14 of Garman '149, the expandable member clearly assumes various degrees of inclination as it is elevated, and a major portion of the expandable member clearly moves upwardly and forwardly as it is raised from an initial downwardly-extending vertical position.

Furthermore, in response to Applicant's argument on page 4 of the Appeal Brief stating that Garman '149 does not show the claimed limitations of "an apparatus for assisting a seated person into adopting a reclined position from a sitting position and supporting a body part or lower limb of the person", the examiner respectfully disagrees. Figures 1, 2, 8, 9, 9A, 10 and column 6, lines 26-49 of the Garman '149 patent clearly indicate that the apparatus (30, 30A, 60, 63) disclosed therein is primarily used "for transferring a person to or from [a] bed", and since

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the apparatus of Garman '149 supports the entire body of a user, it generally follows that a body part or lower limb of the user is supported as well.

In response to Applicant's argument on pages 4 and 5 of the Appeal Brief stating that Garman '149 does not include certain features of the Applicant's invention, the limitations on which the Applicant relies (i.e., an apparatus for assisting a seated person into adopting a reclined position from a sitting position), are not stated in the claim. (Applicant's claim 1 merely recites an apparatus for supporting a body part.) It is the claims that define the claimed invention, and it is claims, not specifications, that are anticipated or unpatentable. *Constant v. Advanced Micro-Devices Inc.*, 7 USPQ2d 1064.

Moreover, in response to Applicant's arguments on pages 6 and 7 of the Appeal Brief regarding claims 11 and 31, the examiner respectfully disagrees, and maintains that all of the claims (i.e., claims 1-35) were rejected in the final Office action filed April 10, 2002 as stated in page 2, paragraph 2 thereof. Additionally, since the expandable member of Garman '149 has been clearly shown to move upwardly and forwardly to an inclined position and the apparatus of Garman '149 clearly supports the lower limb of a user and is primarily used to transfer a person to and from a bed as indicated in the preceding paragraphs, the examiner also respectfully maintains that Garman '149 still discloses all of the limitations as recited in Applicant's claims 11 and 31.

In response to Applicant's arguments on pages 8, 11, and 13 of the Appeal Brief concerning claims 21-24, 34, and 35, 37 CFR § 1.111(b) states, "A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements

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of this section.” Applicant has failed to specifically point out how the language of the claims patentably distinguishes it from the reference(s).

Furthermore, in response to Applicant’s arguments on page 8 of the Appeal Brief stating that Garman ‘149 does not include certain features of the Applicant’s invention, the limitations on which the Applicant relies (i.e., “*only* a foot is being elevated” and “*only* an arm is being elevated, and *not* the entire body of a user”), are not stated in claims 3, 4, 13, and 14. It is the claims that define the claimed invention, and it is claims, not specifications, that are anticipated or unpatentable. *Constant v. Advanced Micro-Devices Inc.*, 7 USPQ2d 1064.

In response to Applicant’s arguments on page 9 of the Appeal Brief stating that the rest member (31, 63) of Garman ‘149 is not a platform configured to the body part, the examiner respectfully disagrees; since Applicant’s claims 1, 5, 6, and 16 broadly recite an “apparatus for supporting a body part” and do not specify a particular “body part” to be supported, the examiner respectfully maintains that Garman ‘149 shows all of the limitations as recited broadly in claims 5, 6, and 16 due to the fact that the rest member of Garman ‘149 clearly and directly supports a “body part” of a user as described throughout the disclosure thereof (please note specifically column 4, line 59; column 5, lines 3, 5, 44, & 52; column 6, lines 2 & 67; and column 7, line 34). The fact that the rest member of Garman ‘149 is “completely flat” is irrelevant.

In response to Applicant’s arguments on page 9 of the Appeal Brief concerning claim 7, it is generally understood that the Markush group recited in the claim is a basic form of alternate expression (as noted in MPEP 2173.05(g)); hence, Garman ‘149 is still considered to show the limitation as recited in Applicant’s claim 7 since this reference discloses the use of a bellows (31) as illustrated in Figures 2, 5, 7-9, 9A, & 10 and as described in column 5, lines 42-47. With

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(31) as illustrated in Figures 2, 5, 7-9, 9A, & 10 and as described in column 5, lines 42-47. With regards to Applicant's arguments pertaining to claims 8 and 17, the examiner respectfully maintains that Garman '149 still discloses the use of an expandable member (39) adhered to the platform (31) as claimed (please note Figures 2, 5, 7-9, 9A, & 10 and column 5, lines 42-47); the fact that the expandable member of Garman '149 is positioned on a wheeled chassis 40 is also irrelevant.

Furthermore, in response to Applicant's arguments on page 10 of the Appeal Brief concerning claim 9, the examiner respectfully maintains that Garman '149 still discloses the use of a safety guard (42) as broadly recited in Applicant's claim 9 since the claim does not assign a definite structure to the safety guard, nor does the claim denote a particular structural cooperation or interrelationship between the means for inflating and the safety guard. Claims in a pending application should be given their broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974). Additionally, in response to Applicant's arguments on page 10 of the Appeal Brief stating that Garman '149 does not include certain features of the Applicant's invention, the limitations on which the Applicant relies (i.e., the compressor expands *against* a rest member and an *angular* inflation of a bellows), are not stated in claims 15 and 18.

(Applicant's claim 15 merely contains the step of "expanding the rest member by a compressor", whereas Applicant's claim 18 simply recites the step of "providing means for inflating the bellows.") It is the claims that define the claimed invention, and it is claims, not specifications, that are anticipated or unpatentable. *Constant v. Advanced Micro-Devices Inc.*, 7 USPQ2d 1064. With respect to Applicant's arguments on pages 10 and 11 of the Appeal Brief regarding claim 12, the examiner respectfully maintains that each part of the apparatus of Garman '149, including

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expandable rest member (31, 63), is associated with a bed as recited in claim 12 since the entire apparatus of Garman '149 is primarily designed to be used in association with a bed as previously explained. The fact that the apparatus of Garman '149 also includes a winch 10 is irrelevant.

Moreover, in response to Applicant's argument on page 12 of the Appeal Brief stating that Garman '149 does not include certain features of the Applicant's invention, the limitations on which the Applicant relies (i.e., the support is depressible *in level condition* to the vicinity of the platform after the lower limb has been transferred), are not stated in claims 28-30.

(Applicant's claim 28 merely recites a condition wherein "the support is depressible to the vicinity of the platform after the lower limb has been transferred.") It is the claims that define the claimed invention, and it is claims, not specifications, that are anticipated or unpatentable.

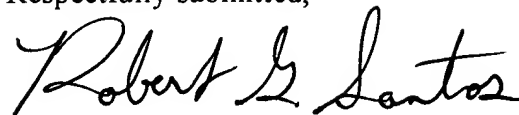
Constant v. Advanced Micro-Devices Inc., 7 USPQ2d 1064.

Lastly, in response to Applicant's arguments on pages 12 and 13 of the Appeal Brief regarding claims 32 and 33, the examiner respectfully maintains that Garman '149 still discloses the limitations as claimed by Applicant since the elevated surface 24 is also supported on a wheeled base as clearly shown in Figures 1, 2, 8, 9, 9A, and 10.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

A handwritten signature in black ink that reads "Robert G. Santos". The signature is written in a cursive style with a large, stylized "R" and "S".

Robert G. Santos
Primary Examiner
Art Unit 3673

R.S.
October 18, 2002

Conferees
A. Grosz
M. Trettel
R. Santos

GEORGE E KERSEY